

## **Initial Statement of Reasons**

**SECTIONS 19800, 19801, 19803, 19804, 19805**

### **SPECIFIC PURPOSE OF THE REGULATIONS.**

The purpose of these regulations is to establish operating procedures of EAAP in order to clarify, implement, and make specific the statutes that provide for local education agency appeals of apportionment significant audit exceptions to the three-member Panel, and requests for summary review to the Executive Officer of the Panel. Specifically, these regulations will provide definitions of terms, rules for the conduct of Panel meetings, and the content of requests for summary review and notices of appeal, as well as procedures for withdrawing requests for summary review and appeals. The regulations will also clarify that the intervention provisions of the APA will apply to appeal proceedings of the Panel.

### **NECESSITY/RATIONALE**

In 1999, EAAP was constituted as a three-member panel to hear and decide appeals by local education agencies of apportionment significant audit exceptions that require repayment to the State of California. (Education Code Section 41344(d), Stats. 1999, c. 78 (AB 1115).) Proposed regulations were noticed in August 2002 and then withdrawn when legislative changes were made to EAAP operations.

In 2002, significant changes were made to the laws governing EAAP operations. EAAP was established as a separate state agency with express rulemaking authority, and the administrative adjudication provisions of the Administrative Procedures Act (APA; Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of the Government Code) were made applicable to EAAP appeal proceedings. (Education Code Section 41344.1(a).) The 2002 law also created an informal summary review process through which the Executive Officer of the Panel may resolve apportionment significant audit exceptions. (Stats. 2002, c. 1128 (AB 2834).)

These regulations are necessary to establish the procedures of EAAP under the changed statute. Section 19802 is reserved for the EAAP Conflict of Interest Code.

### **§ 19800. Definitions.**

These definitions clarify terms used in the statute and elsewhere in these regulations.

(a) The receipt of a “final audit report” by a local education agency triggers the running of the time in which the local agency may file a request for summary review or a notice of appeal of an audit finding. (Education Code § 41344(d).) Reports of annual audits conducted pursuant to Education Code Section 41020 are received by school districts in November and are subsequently filed with the Controller in December each year. However, the reports must then be reviewed and accepted by the Controller pursuant to Education Code Section 14504. Therefore, it is necessary to establish in a regulation that these audit reports are not final for purposes of appeal until the Controller has completed that process some months later. Final reports of other audits or reviews conducted by or for a governmental agency

are those issued after the local agency has had an opportunity to provide a written response. It is only those audits or reviews that include apportionment significant audit exceptions that come within the jurisdiction of EAAP. These definitions are consistent with Education Code Section 41344, subsections (a) and (e).

(b) “Panel” is defined for drafting convenience.

(c) “Parties to the appeal” is defined for drafting convenience.

(d) “Summary review” is defined in order to establish terminology to clearly distinguish appeals made to the Panel and that are thereby subject to the APA from those informal requests that are made to the Executive Officer of the Panel, as set forth individually in statute. (Education Code § 41344.1(b) and (d).)

#### **§ 19801. Quorum; Majority Vote; Limitations on Public Comments.**

(a) and (b) This regulation formalizes the procedures for establishing a quorum and voting on actions that EAAP had followed prior to the changes in its governing statutes.

(c) The Bagley-Keene Open Meetings Act (Government Code Section 11120 and following) provides, in effect, that a state body may impose time limitations on public comment only by adopting a reasonable regulation to that end.

#### **§ 19803. Request for Summary Review Filing; Form of Request for Summary Review; Withdrawal of Request for Summary Review.**

Education Code Section 41344.1(d) established an informal process for review of audit findings. This regulation implements the statute by providing directions on filing requests, the necessary content of requests, and the evidence needed to determine whether a request was filed within the time allowed by Education Code sections 41344(d) and 41344.1(d).

#### **§ 19804. Appeal Filing; Form of Notice of Appeal; Withdrawal of Appeal.**

Education Code sections 41344(d) and 41344.1(a) and (b) address appeals to the Panel. This regulation implements these sections of law by providing directions on filing notices of appeal, the content of notices, and the evidence needed to determine whether a notice was filed within the time allowed by Education Code Section 41344(d).

#### **§ 19805. Intervention.**

Government Code Section 11440.50 provides that this APA provision governing intervention is applicable to adjudicative proceedings only if the agency adopts it by regulation. Education Code Section 41344.1(b) provides that the Controller is a party to all appeals to the Panel, but that the California Department of Education and the Department of Finance may intervene in any appeal at their election. Adopting this APA provision will allow for intervention by the departments of Education or Finance as well as by any other applicant that satisfies the conditions set out.

**TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS.**

EAAP did not rely on any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

**REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.**

No other alternatives were presented to or considered by EAAP.

**REASONABLE ALTERNATIVES TO THE REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON ANY BUSINESS.**

These regulations are applicable only to local education agencies and therefore EAAP has not identified any alternatives that would lessen any adverse impact on small business.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.**

EAAP has determined that the adoption of the proposed regulations would not have a significant impact on any business in the State of California because the regulations affect only local education agencies.